

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1977 of 1995

with

CIVIL REVISION APPLICATION No 2187 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SWATIBEN UMESHBHAI MODI

Versus

UMESHBHAI @ RAKESHBHAI MOHANLAL MODI

Appearance:

1. Civil Revision Application No. 1977 of 1995
MR DEVANG T SHAH for Petitioners
MR DD VYAS for Respondent No. 4
2. Civil Revision ApplicationNo 2187 of 1995
MR DD VYAS for Petitioners

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 31/07/96

ORAL JUDGEMENT

1. Heard Mr. Shah for the petitioners and Mr. Shastri for the respondent. The petitioner No.1 is a Hindu wife married to respondent No.1. They belong to high strata of society. Respondent No.1 is Managing Director of a synthetics private limited company functioning in Surat. Presently, respondent No.1 is staying in another house away from petitioner No.1 and her two minor children aged 8 and 5 years. The petitioners were therefore required to file a suit for interim maintenance. In that suit, the learned Civil Judge (S.D.), Surat has awarded an amount of Rs.1250/- to the petitioner No.1 and Rs.750/- each to the minor children. The petitioners have placed on record the extract of the balance sheet of the company. They have also placed on record the statement from the General Ledger account. They have also described the manner in which they were living together and the huge expenses that they were required to incur every month. As far as these expenses are concerned, there is no specific denial, though it is contended that the petitioner was also running a boutique and for that an advertisement issued in August 1994 is placed on record. It is, however, stated by the petitioner-wife that it was a one time exercise and that too with the help of petitioner-husband. Nothing is shown otherwise by the respondent-husband to indicate the regular income of the petitioner-wife. The learned Trial Judge, after looking into the material on record, came to the conclusion that the parties are hailing from high strata of society and looking to their standard of living, he awarded the amount as stated above. Petitioner No.1-mother and the two minor children have filed this revision application against that order.

2. Mr. Shastri, learned advocate appearing for the respondents has contended that, in revision jurisdiction, the powers of the High Court are limited and under Section 115 of the Code of Civil Procedure, the High Court is not expected to substitute its own views for that of the Trial Court. He has relied upon the judgments of this Court reported in 1973 GLR page 981 and 1984 GLH page 92, in that behalf. As against that, Mr. Shah has relied upon a judgment in 1994(1) GLH page 78 to contend that it is the status of the parties which has got to be considered in such matters.

3. I am quite aware of the limitations of the revisional Court, but Section 115 of the Code of Civil Procedure is not to be read in a pedantic way to perpetuate insufficient orders. In the facts of the present case, when the parties are belonging to very high

section of the society, an amount of Rs.2750 is totally insufficient for looking after two minor children and a lady in an expensive city like Surat. In a detailed judgment discussing the law on this point, the Calcutta High Court has laid down in Chitra vs. Dhruba Jyoti AIR 1988 Calcutta page 98 that the income sufficient to support will always include such amount as would be necessary for necessities suited to status and station to which the wife otherwise belongs and that will vary depending upon the status and station of the husband. In the instant case, it is not disputed that respondent No.1 belongs to a high strata of society. The record is quite eloquent in that behalf. As laid down in the above Calcutta judgment, the onus is on the husband to disclose his true income and he avoided disclosing it fully. Petitioner No.1 has also placed on record the expenses that she is required to incur for the schooling, for transport and for various facilities to the children. If they are used to these facilities over these years, there is no reason why they should be denied those facilities only because their parents have fallen apart. It is difficult to quantify the amount in the fact situation like this, but certainly the amount of Rs.2750/- is insufficient. The petitioners have sought an amount of Rs.10,000/- per month. The parties will lead evidence in this behalf and thereafter, the Trial Court will decide what is the correct amount, which will be decided after appreciating the entire issue. The monthly maintenance of the housing society where the petitioners stay is Rs.600/-. The tuition fees are Rs.550/- per month. Then there are transport charges for rickshaw to go to school. There are expenses mentioned towards consumption of electricity (Rs. 500/- per month), milk, vegetables, groceries, etc. Even by the standard of higher middle class, Rs.7000 to 8000/- will be required for a lady with two children in an expensive city. In a recent judgment of the Honourable Supreme Court, in the case of Sneha Prabha v. Ravinder Kumar, AIR 1995 SC 2170, where the husband and wife belong to the higher income group and where the wife was having the salary of Rs.4000/- per month, having given thoughtful consideration to the facts of that case, the Court awarded Rs.2000/- each for the maintenance of two minor daughters. The learned Trial Judge has failed to exercise jurisdiction vested in him by ignoring the relevant factors. If this interim arrangement is not altered, it will affect seriously the future of the two minors and their mother looking after them. Hence, in my view, it will not be improper if, at this stage, the two children are awarded Rs.2000/each per month and the first petitioner Rs.3000/-. I, therefore, interfere into the impugned order and substitute it by

awarding Rs.3000/- to first petitioner and Rs.2000/- each to second and third petitioners. Mr. Shastri states that all the arrears have been cleared. In that view of the matter, this order will be effective from the month of August 1996 onwards payable at the end of month of August 1996. Rule is made absolute accordingly in C.R.A. No.1977 of 1995. C.R.A. No.2187 filed by the respondent husband is dismissed.

Mr. Shastri applies for stay of this order. The application is rejected. The order will have to be complied with by the end of August 1996. The petitioner has sufficient time to challenge this order if he deems it so.

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